

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202101163	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/25/2021 11:15 PM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 7/25/2022	EO SOL 7/25/2022	
Date/Time CV Reported Sun, 02/14/2021 1:10 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Mon, 02/22/2021 11:40 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Butler	06563	964411	101 PCT
2. POM John Backer	04598	956405	101 PCT
3. POM Shane Ellers	9231	960495	101 PCT
4. POM Brian Hurley	10992	966111	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Butler	Abuse: Police Officer Kevin Butler entered § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B.POM John Backer	Abuse: Police Officer John Backer entered § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C.POM Kevin Butler	Abuse: Police Officer Kevin Butler forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
D.POM John Backer	Abuse: Police Officer John Backer forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
E.POM Kevin Butler	Force: Police Officer Kevin Butler used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
F.POM John Backer	Force: Police Officer John Backer used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
G.POM Shane Ellers	Force: Police Officer Shane Ellers used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
H.POM Brian Hurley	Force: Police Officer Brian Hurley used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
I.POM Kevin Butler	Abuse: Police Officer Kevin Butler questioned § 87(2)(b)	§ 87(2)(g), § 87(4-b)
J.POM John Backer	Abuse: Police Officer John Backer searched § 87(2)(b)	§ 87(2)(g), § 87(4-b)
K.POM John Backer	Discourtesy: Police Officer John Backer spoke discourteously to § 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On February 14, 2021, § 87(2)(b) filed the following complaint on behalf of himself, his wife, § 87(2)(b) and his son, § 87(2)(b) at the 101st Precinct stationhouse. The incident was reported to IAB, where it received original log number § 87(2)(b). On February 22, 2021, this complaint was received at the CCRB. On May 12, 2021, this complaint was reassigned from Inv. Matthew Corwin to Inv. Jackie Manginelli. On June 29, 2021, this complaint was reassigned from Inv. Manginelli to Inv. Rob Bryan. On June 27, 2022, this complaint was reassigned from Inv. Bryan to Inv. Carter Garfield.

On January 25, 2021, at approximately 11:15 p.m., § 87(2)(b) called 911 requesting that police respond to her home at § 87(2)(b) in Queens. PO Kevin Butler, PO John Backer, PO Shane Ellers, and PO Brian Hurley, all of the 101st Precinct, responded to the location, where § 87(2)(b) § 87(2)(b) and their son, § 87(2)(b) were present.

All four officers entered § 87(2)(b) and spoke with § 87(2)(b) (**Allegations A, B: Abuse of Authority: Entry of premises**, § 87(2)(g)). PO Butler prepared a Domestic Incident Report for § 87(2)(b) who stated that her husband, § 87(2)(b) was intoxicated and that she wanted him to leave.

PO Butler and PO Backer determined that § 87(2)(b) needed to be removed to the hospital for intoxication (**Allegations C, D: Abuse of Authority – Forcible removal to the hospital**, § 87(2)(g)). Officers forcibly placed § 87(2)(b) in handcuffs while they waited for the ambulance (**Allegations E, F, G: Force – Physical force**, § 87(2)(g)) (**Allegation H: Force – Physical force**, § 87(2)(g)).

At one point, PO Butler asked § 87(2)(b) "You have anything on you? Any knives, anything like that?" (**Allegation I: Abuse of Authority – Question**, § 87(2)(g)). PO Backer then searched § 87(2)(b) (**Allegation J: Abuse of Authority – Search (of person)**, § 87(2)(g)). A few minutes later, § 87(2)(b) said, "Fuck you" and PO Backer responded, "Holy shit." (**Allegation K: Discourtesy – Word**, § 87(2)(g)).

§ 87(2)(b) was eventually placed in an ambulance and taken to the hospital.

§ 87(2)(g), § 87(4-b)

No summons was issued, and no arrest was made. There is BWC footage from PO Butler, PO Backer, PO Ellers, and PO Hurley (**BRs 06-10**). Relevant portions will be discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kevin Butler entered § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer John Backer entered § 87(2)(b)

It was undisputed that § 87(2)(b) called for police to have § 87(2)(b) removed from § 87(2)(b).

Because this job was assigned to PO Butler and PO Backer, and they were the first two officers to enter the house, **Allegations A and B** are pleaded only against them.

§ 87(2)(b) provided an intake statement to IAB (**BR 01**) and a statement to the CCRB (**BR 02**). In his CCRB statement, § 87(2)(b) stated that he had lived at § 87(2)(b) with his family for the past two years and, on the day of the incident, had not had any altercation with his wife. § 87(2)(b) was in the entryway when he heard a knock on the door. When he opened the door, he found four officers outside. The officers walked inside the home and asked § 87(2)(b) what he was doing there, without asking permission to enter.

§ 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

PO Butler (BR 03) and PO Backer (BR 04) were interviewed for this complaint. They both consistently stated that they responded to the location due to a 911 call for a family dispute. While § 87(2)(b) answered the door on their arrival, § 87(2)(b) invited them inside the house to speak with her away from § 87(2)(b). PO Butler added that he had responded to this location once prior for a similar incident.

PO Ellers (BR 05) was also interviewed for this complaint. He could not recall who let the officers inside but stated that no one explicitly offered consent for the officers to enter.

The Department Advocate's Office confirmed that PO Hurley resigned from the NYPD on January 29, 2022 (BR 25).

PO Butler's BWC (BR 06) is the most comprehensive. PO Butler is the first officer to enter the house after § 87(2)(b) opens the door at 00:30. § 87(2)(b) is not visible in the frame until after PO Butler enters the entryway. There is no audio until 1:00. By the time the audio begins, all four officers have entered the entryway. § 87(2)(b) then leads them upstairs into the home, where she states she wants to file a report against § 87(2)(b).

The investigation obtained § 87(2)(b)'s 911 call (BRs 11, 12). § 87(2)(b) reports a domestic incident and states that § 87(2)(b) is intoxicated and cursing at her. She wants him to leave. She says he does not have any weapons nor is he being violent towards her but that he is acting "crazy."

According to People v. Rodriguez, 77 A.D.3d 280, 2010 (BR 26), officers are permitted to enter premises without a warrant if they reasonably believe that there is an emergency and an immediate need for their assistance for the protection of life or property and a reasonable basis to associate the emergency with the area being entered.

It was undisputed that PO Butler and PO Backer were responding to a 911 call involving a domestic dispute, in which § 87(2)(b) described § 87(2)(b) as intoxicated and acting "crazy". When the officers arrived at § 87(2)(b), they were met with both § 87(2)(b) and § 87(2)(b) in the entryway. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Kevin Butler forcibly removed § 87(2)(b) to the hospital.

Allegation (D) Abuse of Authority: Police Officer John Backer forcibly removed § 87(2)(b) to the hospital.

It was undisputed that § 87(2)(b) refused to leave because he believed he lived at § 87(2)(b).

§ 87(2)(b) (BR 02) stated that he was not intoxicated at the time of the incident and that he had consumed two glasses of wine about five hours prior. He did not want to go to the hospital. He also stated that he had lived at § 87(2)(b) for the past two years.

§ 87(2)(b) did not sign HIPAA forms. The investigation therefore was unable to obtain any medical records pertaining to this incident.

§ 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

PO Butler (BR 03) stated that he prepared a Domestic Incident Report for § 87(2)(b) who stated that § 87(2)(b) was intoxicated and no longer lived at § 87(2)(b). § 87(2)(b) was nonviolent and was not carrying any weapons. § 87(2)(b) was living with his brother somewhere on Atlantic Avenue. PO Butler took no steps to confirm that § 87(2)(b) did not live at the premises, nor did he see any other officer on scene do anything similar.

After preparing the Domestic Incident report, all four officers went downstairs to speak with § 87(2)(b) and told him he had to leave the premises. PO Butler believed § 87(2)(b)

§ 87(2)(b) was intoxicated because he was slurring his words, appeared confused, and was flailing his arms. Because § 87(2)(b) refused to leave, officers made the mutual decision to send him to the hospital for intoxication. At no point did PO Butler believe § 87(2)(b) was a danger to himself or others.

PO Backer (**BR 04**) provided a statement consistent with PO Butler's with the following exception. He recalled § 87(2)(b)'s breath smelling of alcohol.

PO Ellers (**BR 05**) provided a statement consistent with PO Butler's and PO Backer's with the following exception. He recalled that § 87(2)(b) was slurring his words, speaking incoherently without answering the officers' questions (though he admitted having "a few drinks" when asked), and threatening to have the officers fired, though he did not make any physical threats. He was unsteady on his feet, his eyes were watery, and PO Ellers could smell alcohol on his breath. At some point, officers determined that § 87(2)(b) did not live at the location, but PO Ellers could not recall how they came to this determination.

PO Butler's BWC (**BR 06**) is generally consistent with his statement. At no point do officers attempt to confirm whether § 87(2)(b) lives at the location. At 6:00, PO Butler prepares a DIR for § 87(2)(b). § 87(2)(b) states that § 87(2)(b) does not have any weapons and she is not concerned that § 87(2)(b) will harm her. At 7:55, PO Butler goes downstairs after completing the DIR and tells § 87(2)(b) that he has to "take a walk." § 87(2)(b) states that he lives there. PO Backer replies, "It's either you leave, or we're taking you to the hospital. Those are the options." PO Backer says to § 87(2)(b) that he is intoxicated, and § 87(2)(b) states that he is not. At 20:32, § 87(2)(b) is placed in an ambulance.

The investigation obtained Domestic Incident Report #§ 87(2)(b) (**BR 14**) which is consistent with PO Butler's statement.

The investigation obtained AIDED Report #§ 87(2)(b) (**BR 27**), which states the following: "At TPO, Aided was removed to § 87(2)(b) Hospital due to being intoxicated. Aided was not making sense talking and admitted to officers he drank. Aided removed to § 87(2)(b) ER by FDNY EMS." § 87(2)(b) is not listed as an EDP, nor does the report note any injuries.

Patrol Guide 221-13 (**BR 13**) defines an emotionally disturbed person (EDP) as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.

Patrol Guide 216-01 (**BR 28**) states that whenever a uniformed member of the service is present at the scene of an aided case that is not life threatening, and there is a difference of opinion between the aided, aided's family, or other interested parties and Emergency Medical Service (EMS) personnel relative to the medical treatment or removal of the aided to a hospital, the member concerned will immediately request the patrol supervisor and an EMS supervisor to respond to the scene.

It was undisputed by all parties that § 87(2)(b) was not a threat to himself or others. While it was also undisputed that he was intoxicated, there was nothing noted in the BWC, police documentation, or officer statements to indicate that his level of intoxication exceeded that of normal recreational use. § 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: Police Officer Kevin Butler used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer John Backer used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Shane Ellers used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation (H) Force: Police Officer Brian Hurley used physical force against § 87(2)(b)

§ 87(2)(b) consistently stated that officers broke his arm when they handcuffed him (BRs 01, 02). In his IAB statement, the interviewing lieutenant stated that § 87(2)(b) had his arm in a sling when he came to the stationhouse. In his phone statement, he said officers pushed him against the wall and “wrenched” his arms behind his back so aggressively that his elbow felt like it had been dislocated.

§ 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

PO Butler (BR 03), PO Backer (BR 04), and PO Ellers (BR 05) consistently stated that § 87(2)(b) resisted being placed in handcuffs by tensing his arms and that it took all four officers to handcuff him. PO Butler added that § 87(2)(b) was screaming in pain for the rest of the incident.

All four officer’s BWC videos capture § 87(2)(b) being placed in handcuffs (BRs 06-09). However, the lighting makes it difficult to see exactly what occurs. In PO Backer’s BWC (BR 07), at 11:10, PO Butler tells § 87(2)(b) to put his hands behind his back. Handcuffs are heard clicking, but not seen on video. At 11:35, § 87(2)(b) screams, and PO Butler tells him to stop. At 11:45, PO Butler tells § 87(2)(b) to put his hands behind his back. § 87(2)(b) says, “You broke my fucking hand.” He continues screaming for the rest of the incident.

Because § 87(2)(b) did not sign HIPAA forms, the investigation was unable to confirm the extent of his injuries.

The investigation obtained AIDED Report #§ 87(2)(b) (BR 27), which states the following: “At TPO, Aided was removed to § 87(2)(b) Hospital due to being intoxicated. Aided was not making sense talking and admitted to officers he drank. Aided removed to § 87(2)(b) ER by FDNY EMS.” § 87(2)(b) is not listed as an EDP, nor does the report note any injuries.

No TRI was prepared for this incident (BR 14)-

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Kevin Butler questioned § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer John Backer searched § 87(2)(b)

While not alleged by § 87(2)(b) in PO Butler’s BWC (BR 06), at 15:25, PO Butler asks § 87(2)(b) “You don’t have anything on you, any knives or anything, right?” In PO Backer’s BWC (BR 07), at 17:50, PO Backer reaches his hand into § 87(2)(b)’s pockets without any preliminary frisk. He tells him that he is making sure that he does not have any weapons on him. At no point does PO Backer or any officer request consent to search § 87(2)(b) before PO Backer does so.

PO Butler (BR 03) had no independent recollection of asking § 87(2)(b) any pointed questions but stated that at no point did he suspect that § 87(2)(b) had a weapon on his person. He asked if § 87(2)(b) had any knives on him for safety purposes.

PO Backer (BR 04) had no independent recollection of searching § 87(2)(b). He stated that it was procedure for him to search § 87(2)(b). He added that whenever a civilian is detained and placed in handcuffs – for a hospital removal, arrest, anything – he searches the

civilian for safety purposes. He did not make any physical observations of § 87(2)(b) s person that suggested that § 87(2)(b) had any weapons on him (such as any bulges) nor did he hear § 87(2)(b) make any statements that suggested that he had a weapon on him.

The investigation obtained Domestic Incident Report § 87(2)(b) (BR 14) which is consistent with PO Butler's statement. The DIR does not list any weapons used or any offense committed by § 87(2)(b).

The investigation obtained § 87(2)(b) s 911 call (BRs 11, 12). § 87(2)(b) states that § 87(2)(b) is intoxicated and cursing at her. She wants him to leave. She says he does not have any weapons or that he is being violent towards her.

According to People v. De Bour, 40 N.Y.2d 210 (BR 15) officers may ask an accusatory question if they have founded suspicion that criminal activity is present. An officer can search an individual if the officer has probable cause to believe that the individual has committed a crime.

Neither PO Butler nor PO Backer thought that § 87(2)(b) had committed any crime. They both stated that they made no observations that suggested § 87(2)(b) was carrying a weapon, did not hear § 87(2)(b) make any threatening statements, and at no point considered him to be a threat to officers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (K) Discourtesy: Police Officer John Backer spoke discourteously to § 87(2)(b)

§ 87(2)(b)

While not alleged by § 87(2)(b) at 18:37, § 87(2)(b) says, "Fuck you" while § 87(2)(b) searches his pockets. PO Backer responds, "Holy shit." § 87(2)(b) is in handcuffs and standing outside with all four officers when this occurs.

§ 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

PO Backer (BR 04) had no independent recollection of using any discourteous language during this incident. After rewatching his BWC, he stated that he used the word "shit" because of a bad habit. He stated he had no experience using profanity as a de-escalation technique. He described the entire situation as "a bit stressful," though also stated that § 87(2)(b) never threatened the officers with violence.

Patrol Guide Procedure 200-02 (BR 18) states that officers are committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

In DAO-DCT Case Number: 2017-17276 (BR 19) the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent and stressful confrontation.

When PO Backer used the phrase "holy shit," § 87(2)(b) was in handcuffs and was outnumbered by officers four-to-one. Per officer statements, none of the officers considered him a threat. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 20**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 29**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 30**).
- PO Buter has been a member of service for four years and has been a subject of two CCRB complaints and four allegations, two of which were substantiated.
 - § 87(2)(g)
- PO Backer has been a member of service for eight years and has been a subject in three CCRB complaints and five allegations, one of which was substantiated.
 - 202003308 involved a discourtesy allegation that was substantiated. The Board recommended Command Discipline A and the NYPD imposed no penalty.
- PO Ellers has been a member of service for six years and has been a subject of one CCRB complaint and two allegations, neither of which were substantiated.
- PO Hurley, who resigned from the NYPD on January 29, 2022, had been a member of service for three years.

Mediation, Civil, and Criminal Histories

- This complaint was unsuitable for mediation.
- On September 26, 2022, a FOIL request for any Notice of Claim regarding this incident was filed with the Office of the Comptroller and will be added to the case file upon receipt (**BR 21**).
- § 87(2)(b)

Squad: 10

Investigator: Carter Garfield Inv. Garfield 10/19/2022
Signature Print Title & Name Date

Squad Leader: Maura R. Roche IM Maura R. Roche 10/20/2022
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
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